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THE LOCAL GOVERNMENT OF COUNTRY COMMUNITIES IN PRUSSIA.

Two important laws for the administration of country communities have been lately passed in Prussia. In 1891 an act for the government of country communities (*Landgemeindeordnung*) in the provinces of Eastern and Western Prussia, Brandenburg, Pomerania, Silesia, Posen and Saxony, went into force, and in the following year it was extended with like modifications to the province of Sleswick-Holstein. The importance of these acts is not to be underrated, for they put an end to the last remains of the feudal system in Prussia. I propose, therefore, in this paper, to examine briefly the character of these reforms, both from a political and an historical point of view.

From the times of the German conquest, large estates have prevailed throughout all of Eastern Germany. It was the military interest of the conquering chiefs which made them distribute the soil in estates, among their followers, fit to bear the heavy charge of a knight's service. Side by side with these estates of the knights, German villages were

founded, the inhabitants of which were bound to many services and rents to the duke or margrave, and the mayor of which was an attendant of the same. But this political and social freedom of the peasantry did not survive the century after the conquest. Financial distresses, caused by repeated divisions of the territories among several brothers during the second part of the thirteenth century, obliged the sovereigns of the eastern territories to sell the financial and political rights they enjoyed over the peasantry, one after the other to the knights of the country. To the latter were now due the services and the rents of the peasants; the knight was the patrimonial justice of the village. It resulted, therefore, that the possessors of the large estates came to exercise both a social and political authority within the village; that the knight became a landlord, his estate, a manor. By the means of his political authority as justice of the village, he might now increase the social and economic dependency of his tenants, especially by driving away one part of them from their estates, and widening the land in demesne and then saddling the services of those driven away upon the remaining peasants. Evidently the social situation of the peasantry in eastern Germany became worse with every century. Finally, after the Reformation, the encroachments of the landlords, through the medium of the Roman law, brought the cultivators of the soil into a condition of serfdom which, except in some Slavic countries, had never before existed in the eastern territories.

It was not before the beginning of the eighteenth century that absolute monarchy put some restraints upon the power of the landlords, obliging them to occupy all the estates of peasants by tenants, and prohibiting the union of those estates with the manorial land. Absolute monarchy did not indeed sunder the ties of social and economic dependency by which the peasantry was bound to the manor, but prevented that social dependency in its extreme form from effecting the destruction of the peasantry by the landlords. Therefore, absolute monarchy, by preserving the peasants

from annihilation, prepared the way for the later social reforms by means of which they secured perfect social freedom.

The reforms of Stein and Hardenberg cleared away the débris of feudalism only on its social side. By a long and difficult process the administrative authorities succeeded in making the peasants freeholders of their estates, and in delivering them from all the services and rents due hitherto to the landlord. The social structure of feudalism, therefore, disappeared from the country. There were larger estates and smaller ones, but their respective proprietors had the same rights on the soil—they were no longer dependent the one from the other.

It might have been expected that the political authority of the landlords, being only the consequence of the social dependency of the peasants, would perish at the same time. Indeed Stein and Hardenberg had already prepared acts for the better government of country communities. The failure of these plans resulted from two causes. During the first years of the reforming era, when Stein and his immediate successors, the ministry Dohna-Altenstein, were at the head of the Prussian Government, the social reform was not completed, and it would have been quite impossible to inaugurate the intended scheme of self-government while the peasants were still in a state of social dependency on their landlords. Therefore, all the projects for the administrative reform of the country were destined to disappointment until social independence could be accomplished. It is the merit of Hardenberg to have continued the administrative reforms of Stein along another line—the social one. Not until the social dependency of the peasants had come to an end could the right moment come to substitute for the feudal administration of the country by the landlords the principles of modern self-government. Indeed, both in 1812 and in 1820, Hardenberg caused such a plan to be prepared. But in both cases he failed, because of the increasing influence of the landed gentry at court, who represented to King Frederick

William III. that the steps of Hardenberg's government were revolutionary and contrary to all the traditions of the Prussian monarchy. When Hardenberg died in 1822, the projects of administrative reform were definitely buried.

The situation of the country in the eastern provinces, from the social and political point of view, was now a very strange one. The social structure of feudalism, with few exceptions, had disappeared, yet the political consequences of that social state were preserved like precious remains of better times, not yet infected by revolutionary ideas.

The government of the country was regulated principally by local by-laws and observances. Supplementary to these the Common Code of Prussia (*Allgemeines Landrecht*), Part II., Art. 7, contained some general principles which were to be applied wherever local by-laws and observances were deficient. But all these sources of law were founded on the pre-supposition that the landlord had a social authority over the members of the village community, and, as this pre-supposition gradually disappeared, great uncertainty of law was the natural consequence, which had to be remedied as far as possible by the administrative boards.

The average state of things was the following : Two kinds of political communities are to be discerned in the country. The landlord's estate, called *Rittergut*, is no part of the village community, but subject only to the immediate authority of its possessor. Within the village community the landlord has the right to nominate the mayor of the village, or at least to confirm him, if his dignity was hereditary in his family. The landlord, moreover, exercised the supreme supervision of the village administration ; the more important conclusions of the assembly could not be executed until they were agreed to by the landlord. Within both the landlord's estate and the village, police was administered by the landlord himself or his representative. Finally, he appointed a justiciary, who, in his name, administered justice to the inhabitants of the village and of the estate, excepting the landlord and the members of his family.

Even in those parts of the province of Saxony where the French and Westphalian governments had abolished all feudal institutions, patrimonial local government was restored by the influence of the reaction at court. But in Posen and some parts of Western Prussia, on account of the Polish nationality, to which a great part of the landed gentry strongly adhered, it was to be feared that the restoration of patrimonial government would strengthen the hereditary enemies of Prussian and German authority. Here, therefore, royal courts of justice were substituted for the patrimonial justiciaries; the landlords were permitted to administer police only on their own estates, the police in the villages having been entrusted to government agents. Yet in these provinces the landlord might supervise the management of the village community, and thereby exercise at least a limited public authority. Only in the western provinces of Westphalia and Rhenania no serious attempt was made at all to restore any feudal institution of local government. Here the principles of French administrative law for the village communities were maintained with little modifications.

The hurricane of the year 1848 swept away the last remnants of feudal administration preserved in our modern society. According to the new constitution of the kingdom, a royal ordinance of 1849 abolished the private justice of the landlords, and substituted for it royal courts in every county. Two laws of 1850, closely connected, regulated the administration of the village communities which were exempted from all administrative authority of the landlord, the latter being confined to his own estate, and entrusted the local police to the mayors of larger communities, composed of one or more villages and estates. Yet the law for the better government of the communities could not be put into force, because the radical parties, through whose influence it had been passed, had no sufficient regard for the historical diversities of the towns and the country and of the different provinces. The police law, too, its execution being dependent

on the municipal law, could not be put into force. Therefore, by the aid of the reaction which overcame the revolutionary tendencies after 1851 through all Europe, both laws were suspended. Though the abolition of the patrimonial justice was maintained, the feudal system of administration for the management of the police and the municipal government of the village community was restored by the suspension. A revision of the laws then in force was indeed promised, and afterwards, in 1856, accomplished; but that revision did not touch the principles of the existing feudal administration. Only subordinate matters, the composition of the village assembly, for instance, and the levy of municipal taxes, were better regulated.

During the period of reaction in Prussia, from 1851 to 1857, feudal government in its last mild form was esteemed as strong a bulwark against a new revolution as before the year 1848. Romantic scholars of public law, as Aahl, endeavored to prove that nothing but patrimonial administration would agree with the principles of German commonwealths, and thereby supported the interests of the landlords. To King Frederick William IV. it was at least a comfort that, notwithstanding the fact that the government had been obliged to yield to constitutional monarchy and democratic society, the corner-stone of an opposite scheme of public law was restored.

It was not before the beginning of the reign of King William I. that new schemes for administrative reforms were entered upon; but the conflict between the government and the House of Deputies, concerning the re-organization of the army, and the war of 1870–71 caused new delays. Finally, in 1872, the County Government Act (*Kreisordnung*) was agreed to by Parliament.

The county government being based on the town and village communities, it was evidently the reform of the latter which should have preceded every further step of legislation. Yet, owing to political causes, a new system of county government was the first adopted. Although such was the

proceeding of the legislature, the County Government Act could not be confined to the regulating of county administration; it was extended to the reform of the village communities, at least as far as the county government was based on village government. Therefore, the County Government Act of 1872 regulated several matters concerning the smaller communities of the territory of which the county was composed.

The patrimonial police of the landlord was definitely abolished. The County Government Act states the new principle of public law, that police shall be everywhere exercised in the name of the king. For the administration of police, one or several villages or independent estates are formed into a division (*Amtsbezirk*). The division is represented by a board, elected by the single village communities and possessors of estates, which manages especially the financial business of the division. The only legal charge of the division consists in bearing the costs of the police administration. The president of the division (*Amtsvorsteher*) is appointed by the president of the province (*Oberpräsident*), on nomination made by the representative board of the county. He is the chairman of the division board and the chief of police administration. His duties are performed gratis. As a rule, the former landlords were appointed presidents of the division. They, therefore, exercised the same police authority they had had before, merely the title by which they performed their office having been changed. The similarity of the justice of peace in England to the division president in Prussia has often been mentioned. The resemblance is, however, rather a political than a legal one. For the division president is not competent within all the county, but only within his own division, no concurrent jurisdiction of different officials being allowed, and his official duties are confined to the police department without any criminal jurisdiction. Besides, the county government is not managed by the division presidents, but by the special authorities of the county.

Furthermore, the last traces of feudalism in the municipal government of the village were extinguished by the County Government Act. A mayor, elected for several years by the village assembly and confirmed by the administrative authorities of the state, was now the chief of the municipal government. The state, too, reserved exclusively to its appointees the control of the municipal management in the village. The rights of the landlords, being in contradiction to these new principles, were abolished. Only within the independent estates, to which village powers were granted, the landlord had to bear all the charges of a village community at his own expense, and in return was allowed to perform all the duties of a mayor therein.

The County Government Act was issued for all the eastern provinces, including the province of Posen, provided that it should be extended thereto by royal ordinance. Such an ordinance was never published. On the contrary, a few years later, it was thought prejudicial to the German interest if self-government, such as was established by the County Government Act, should be conceded to a province inhabited chiefly by Poles. Therefore, at the revision of the law in 1881, the province of Posen was expressly exempted. Though the patrimonial system of police had long been abolished in Posen, yet the feudal scheme of municipal administration of the country continued to be in force. The maintenance of these feudal remnants seemed very advantageous to the Germans, since the inhabitants of the villages to whom modern self-government was denied were for the most part Poles, while the proprietors of the larger estates, under whose tutelage the villages were obliged to remain, were chiefly German.

On the other hand, the County Government Act for the province of Sleswick-Holstein of 1888 was almost identical with the act for the eastern provinces. Therefore, the remnants of feudal administration still to be found there were removed in like manner as in the eastern provinces. Nor was there in Sleswick-Holstein any law regulating the

municipal administration of the villages. Common law, the origin of which was to be sought in the feudal times, some laws of recent origin, regulating only particular matters of municipal administration, and the County Government Act for Sleswick-Holstein were the sources in which the municipal law of the country was to be found.

To say nothing of the strange situation of the country in the province of Posen, there were two causes especially which made a new codification of the municipal law for village communities necessary. First, the law in force was partly entirely unwritten law, partly scattered through several acts, and partly based on the principles, not otherwise applicable, of feudal government. Secondly, a great number of village communities and independent estates were so small that they could not bear the communal charges imposed on the communities by the State, especially for the management of primary schools, of roads and highways and for the care of the poor. There was only one remedy —the combination of several small villages into a larger community. Yet the possessors of the independent estates did not wish to come into any nearer connection with the peasantry. The government being without any legal means to unite communities and estates against their own wishes, a law was wanted to enforce such unions in the public interest.

It was the minister for the home department, Herfurth, who caused a bill to be prepared for the eastern provinces at the close of the year 1890. The parliamentary struggle caused thereby was long and sharp. The bill was strongly opposed by the Conservative party, which represented the interests of the landed gentry. The apprehension was expressed that subordinate administrative authorities, to the reports of which the ministry must trust, might, in their excessive zeal, cause the annihilation or the union of communities and estates, which did not properly belong under the head of weak communes. Finally, a compromise was brought about which met these objections, and yet gave the

government the legal means it needed for the general interest. During the last session of the Prussian Diet the act was extended with little modifications to the province of Sleswick-Holstein. Thus the same law for the government of country communities is now in force for eight provinces of the Prussian monarchy.

The village communities and independent estates, existing at the passage of the act, are maintained for the future. Yet weak units, both communities and estates, may for the public interest either be incorporated in other communities or be combined into a communal union. No such measure may be taken by the ordinary administrative authorities against the wishes of the communities and possessors interested. But the decision is committed to the administrative committees of the county, of the district and of the province, in which the members of the landed gentry have a prevailing influence and in last resort to the ministry, which is obliged to pronounce a formal judgment with reasons. Therefore, the interest of the State that every community and estate be large enough to bear the public charges and the interests of the communities and possessors, that no community or estate be deprived of its independence without an urgent necessity, are both taken account of. The village community is incorporated for purposes of local government, so far as such authority is delegated or committed to communities by law. The different subjects of local government are not enumerated by the act; the most important ones will be mentioned.

The membership of the community, hitherto confined to the possessors of farmhouses within the village, is now conceded to every inhabitant. Every one, therefore, by virtue of his domicile may enjoy the use of all communal institutions and in return is subject to all communal charges. But though every inhabitant be a member of the community, the political rights of an elector are only granted to members paying certain taxes or having a certain income. In small communities all the electors will meet as the assembly of the

community; in larger ones a council of deputies is to be formed. In every case the political rights of electors are graduated by their incomes or their taxes into three classes. The richest electors, comprising those who, taken together, pay the third part of all the taxes in the village or have the third part of all the income therein, form the first class; the electors of the first class having been determined, the next richest electors, comprising those who, taken together, pay the second third of taxes, or have the second third of the income, constitute the second class; and all the residue of the electors, the third class. The members of the first class, though fewer in number than those of the second and third classes, have the same number of votes at the assembly, if it is composed of the electors themselves, or at the election of the deputies for the village council. In this way the influence of the proprietors or wealthier classes is insured two-thirds of the votes in the assembly or in the council in every case belonging to them. The term for which the village council is elected is six years.

The mayor of the village and his two assistants are elected by the assembly or the council for six years and confirmed by the county president (*Landrat*), yet confirmation may not be withheld without the consent of the county administrative committee. The feudal institution of mayors, hereditary or appointed by the landlord, which was still to be found in the province of Posen, has now disappeared throughout the Prussian kingdom. The mayor and the assistants perform their duties without any compensation, only in larger communities, where the mayor must spend all his time upon communal business, a salary may be granted to him.

Two remarks must be made on the new constitution of the village communities as compared with their situation before the Country Communities Act was issued. They concern the political rights of village communities generally and the division of the electors into classes.

Formerly the membership of a village community and the exercise of political rights therein was granted only to the

owners of farmhouses within the boundaries of the village. This state of things was in accord with the former social situation when village communities were rather economic than political formations. By the agrarian revolution effected through all Europe in the beginning of this century, the economic community in almost every instance was dissolved. The political importance of the community was, however, constantly increasing. Thus while political interests were not confined to the owners of farmhouses, other inhabitants were obliged to bear their share of the communal charges, especially for the management of primary schools, the almshouse, and the repair of roads. Nevertheless, the non-owners were excluded from political rights. Though adequate to communities wherein the peasants were the prevailing element of population, that exclusion in the suburbs of large cities and in villages prevailingly industrial, where the non-owners bore the largest part of the communal charges, was evidently an injustice. There were two remedies. Either the law, while preserving the historical character of village communities, might grant the Municipal Corporation Act to all villages where industrial or commercial establishments had grown up, or the membership of the community and the rights of an elector were to be extended to all inhabitants independently of their character as proprietors. The government took the latter scheme, notwithstanding the opposition of the Conservative party, a member of which, not without reason, characterized the bill as destined only for Rixdorf, a large suburb of Berlin. Yet the proposal of the government was adopted by Parliament. Therefore, the historical character of village communities is destroyed. But the new principle is modified in its execution, since two-thirds of the votes in the village assembly or council belong to the proprietors, as they constitute the wealthier classes.

The division of members into several classes for political purposes was, moreover, formerly adapted to the different social classes of the peasantry, namely, peasants, half-peasants, cottage holders, etc. This scheme should have been

maintained, even after the non-holders had been admitted to political rights. The only thing necessary was a supplement to the classes already existing by classes of manufacturers, tradesmen, workmen, etc., among which the votes should be distributed by local by-laws in just proportion. But in this regard also the new act destroyed historical formations, which the peasantry was accustomed to, without constituting a better scheme of division for the abolished one. For it is not to be denied that the division into three classes in proportion to the income or the taxes is a very mechanical device and especially unfit for communities where the natural economy of former times still prevails. Notwithstanding these considerations, the three class system, which for municipal corporations is indeed the most expedient, was adopted also for country communities.

The independent estates of the former landlords are not incorporated into the village communities by the new act, although this was strongly urged by the Liberal party, which was of the opinion that they should be incorporated into the communities. Within the boundaries of an independent estate its possessor must bear all the charges of a village community at his own expense. The possessor, as mayor of his estate, is confirmed by the county president in the like manner as the mayor of a village. Whenever he may be incapacitated for the management of political affairs, a vicary substitute must be provided for at his expense.

One or more village communities and independent estates may be combined into a union for certain administrative purposes. We must remember that by the County Government Act of 1872, as also by that of 1888 for Sleswick-Holstein, there were formed divisions in the country for the administration of police. Those divisions, existing only for that one purpose, are preserved. But there were yet other charges which ought not to be borne by a single village community or by a single independent estate. Especially the proper management of primary schools, of the poor, and of roads and highways, was impossible by the small

communities and estates of eastern Germany. To transfer those and other communal charges, which the single communities or estates could no longer bear, to the division seemed the best expedient. Indeed, the County Government Act had already empowered both communities and possessors of estates to make such transfers. One further step was yet to be taken. There was wanted a legal clause, empowering administrative authorities to transfer local business to larger communities, even against the wishes of the communities and possessors concerned.

The divisions already adopted did not seem everywhere fit for that purpose, their boundaries having been fixed especially for the police administration. Though alterations of the boundaries could have been easily made, another course was taken. The government yielded to the tendencies of the Conservative party toward preserving, as much as possible, the independence of communities and estates. Therefore, the formation of large communities for all communal purposes exceeding the abilities of a single village, community, or estate, was rejected. Wherever for a single purpose a union is wanted, it must be formed separately. Thus it happens that one community or one estate may be a member of different unions. For instance, the communities A and B and the independent estate T may form a police division; the communities B and C, a school union; the community B and the independent estates T and U, a poor union; and the communities A, B, and C, a road union. In that manner the community B is a part of four different administrative unions.

Evidently, by such a proceeding, the independence of the single communities and estates will be thoroughly ensured. It is not to be feared that the union will suck up the communities and estates, and thereby annihilate their political existence, the union having been formed only for one branch of local administration. Yet the simplicity of local government perished by this ingenious scheme. No peasant will be able to comprehend easily this complicated system of

unions. Moreover, mayors, vicaries, and councils must be appointed for every union. We may doubt, with good reason, whether fit persons for so many offices, which are all to be managed gratis by their occupants, are to be found everywhere.

For the development of administrative unions, the English administrative law since 1834 will always be typical. There, too, unions were formed only for single purposes. But administrative authorities and the legislature endeavored to simplify that scheme by transferring the different branches of local administration to the same union. Thus, by degrees the union in England is transformed into a community. It may be hoped that, in a like manner, the different unions in Prussia will receive coincident boundaries, and that the same persons will be appointed as officials and deputies of the different unions. If that should happen, the fault of the law would have been amended by administrative means, and the unions, different by law only, would be identical in fact. Yet it is not to be concealed that this natural development of administrative unions, represented by the English type, is crossed in Prussia by the desire of the landed gentry for preserving the political independence of their estates.

On account of the control of local government by the State the Country Communities Act, in accordance with other modern administrative laws of Prussia, states the principle that only the legality, but not the expediency of local government acts, may be controlled by the State. Its authorities are empowered to suspend every act of local government as illegal. But against such a suspension the interested community, possessor or union, may carry on a formal law-suit before the administrative courts. Only by exception some important conclusions of communal bodies require a confirmation by the State, the authorities of which, in these cases, examine the expediency, too, of the acts put before them.

Passing in rapid review the facts which have just claimed our attention, we perceive that the reform of local governernment in Prussia as now completed, was not only an

administrative need, but an historical necessity. The last ruins of the surviving feudal system of local government are definitely and forever removed. For this reason the Country Communities Act will be of lasting importance far beyond the boundaries of Prussia. Yet we may not deny that the actual enactments are in many regards unsatisfactory. A bureaucratical scheme of equalization prevails throughout the law of country communities. This result is to be regretted the more as the faults, committed in the law, are in great part irremediable. For never again, even in villages without any town-like character, can membership in the community or political rights be withdrawn from the non-possessors, never again can social classes, destroyed by law on account of their political importance, be restored. The bureaucratical tendencies, however, are not consistently worked out. For in the formation of larger country communities, the legislature has stopped before the opposition of the landed gentry and thereby established the insufficient management of communal unions, destined only for single administrative purposes. Excellent in principle, imperfect in particulars, such must be our judgment on reviewing the lately issued Country Communities Act of Prussia.

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